

PHILOSOPHY AND RHETORIC IN CICERO'S *PRO MILONE*

A. W. Lintott has recently analyzed Cicero's relationship with T. Annius Milo, elucidating the motives at the political and personal level which produced this oddly matched *amicitia*¹). Briefly, it can be said that Cicero's hatred and fear of Clodius, his sense of insecurity after his exile, and his efforts in the *post reditum* period to assume again an authoritative position in Roman politics, led him to countenance a policy of civil violence which seems poorly suited to his stated views about proper political action. Lintott shows how Cicero resolved this tension on the basis of traditional Roman notions about the use of violence (*vis*) in private and public conflicts, rooted in the idea of self-help in Roman litigation and extended in the Late Republic to the use of armed followers in defense of *dignitas* against real or imagined threats²). Lintott successfully traces this historical development, and isolates Cicero's numerous appeals to the notion in the heat of political action; but he does not adequately consider the importance to Cicero personally of developing a workable philosophical ethic to justify his political views: our studies indicate that Cicero was not able to justify fully the use of extreme violence against *cives*, especially homicide, until after his unsuccessful defense of Milo in 52; for it is in the published version of the *Pro Milone* that the jargon of factional politics, e. g., *tyrannus* and *regnum*, is transformed into the binding vocabulary of philosophy.

Failure to recognize this developmental aspect of Cicero's political philosophy in the 50's has led scholars to describe a unity in Cicero's thought, dating as early as 59³), from the statements

1) A. W. Lintott, "Cicero and Milo," *JRS* 64 (1974) 62-78 (cited: "Cicero and Milo"). Unfortunately, we were unable to see the excellent article by A. M. Stone, "Pro Milone: Cicero's Second Thoughts," *Antichthon* 14 (1980) 88-111, before our article went to press.

2) "Cicero and Milo," 74-75, based upon his own earlier survey of the morality of force in *Violence in Republican Rome* (Oxford 1968) 52-66 (cited: *Violence*).

3) Lintott, *Violence*, 58-59, 61-62. In "Cicero and Milo" Lintott perhaps underestimates Cicero's personal reservations on Milo (*QFr.* 2.3.4), as well as the effects of the Conference at Luca; as late as 49, Cicero expressed doubts about

made by Cicero during and after the slaying of Clodius. But it was only after the trial of Milo that Cicero achieved a synthesis between the traditional Roman defense of *dignitas* by violence and his own philosophical interpretation of tyranny and its effects on the commonwealth. Like most such philosophies of violence, Cicero's was worked out after the fact in reaction to political and intellectual assaults on his own conduct.

The focal point of this study will be Cicero's "theory" of tyrannicide, as manifested in the *Pro Milone*. Büchner has sufficiently proven that a connection exists between Cicero's view of the tyrant in *De Republica* 2.47 and the portrayal of Clodius as *tyrannus* in the *Pro Milone* and, conversely, between the concept of the remover of the tyrant in *De Republica* 2.51 and Cicero's elevation of Milo to the status of *tyrannoktonos* in his defense⁴). For Cicero, the tyrant was a *genus hominis*, a type of man, which Büchner describes as "etwas Innerliches, eine Haltung und eine Wesensstruktur, nicht eine Amt oder eine Form;" his main characteristic was the desire to establish control (*dominatio*) over his fellow citizens, or to gain power over the constitutional process (*regnum*)⁵). The citizen who frees his fellows from the pestilence of tyranny was likewise conceived of as a particular type of man, the *tutor et procurator rei publicae*, who, by the act of removing the tyrant, performs a "healing function for the commonwealth"⁶). One can find scattered examples of tyrants and saviors so conceived by Cicero, but in the *Pro Milone* the contrast be-

Pompey by analogy with Milo, *Att.* 9.7.3 (*beneficium sequor, mihi crede, non causam, ut in Milone*); cf. K. Büchner, *Cicero* (Heidelberg 1964) 252: "Einen Milo, dem er dankbar verpflichtet war und der, wenn auch unter merkwürdigen Umständen, den Mann erschlagen hatte, den er zum grossen Teil für die Unordnung in der *res publica* verantwortlich machen mußte, ... konnte Cicero nicht im Stich lassen."

4) K. Büchner, "Der Tyrann und sein Gegenbild in Ciceros 'Staat,'" *Studien zur römischen Literatur* II (Wiesbaden 1962) 116-47 (cited: "Tyrann"). For a similar treatment, R. Heinze, "Ciceros 'Staat' als politische Tendenzschrift," *Hermes* 59 (1924) 73-94, who points out (98) that Milo was styled *τυραννοκτόνος* in *Att.* 6.4.3 (50 B.C.). Cf. also V. Buchheit, "Chrysogonus als Tyrann in Ciceros Rede für Roscius aus Ameria," *Chiron* 5 (1975) 193-211; J. R. Dunkle, "The Rhetorical Tyrant in Roman Historiography," *CW* (1967) 12-20; *idem*, "The Greek Tyrant and Roman Political Invective," *TAPA* 97 (1967) 151-71; and A. Michel, *Rhétorique et Philosophie chez Cicéron* (Paris 1960) (cited: Michel).

5) Büchner, "Tyrann," 121. In Roman thought, *regnum* was opposed to *libertas*, and was freely used as a pejorative term in this way: cf. E. Meyer, *Römischer Staat und Staatsgedanke* (Zürich 1964) 345; Ch. Wirszubski, *Libertas as a Political Idea at Rome* (Cambridge 1950).

6) Büchner, "Tyrann," 121.

tween the two becomes intense: Clodius is called *tyrannus* (35), and his murder portrayed as the death of a tyrant (80, 83, 89); whereas Milo is introduced as the *conservator populi* (80) and, by the act of killing Clodius, becomes *tutor et procurator rei publicae*⁷).

Two points, however, remain to be demonstrated: (1) Cicero's view of these *genera hominis* and his theory of tyrannicide are founded upon and developed from current and fashionable Stoic ethics and political philosophy; and (2) the aftereffects of the trial of Milo, with which Cicero was unable to cope on a purely pragmatic level and which compelled him incidentally to confront the position of his supporter M. Brutus on the ethics of homicide, provided Cicero for the first time with a philosophical basis for Roman political violence. Hence, the year 52 was pivotal in the development of Cicero's attitude toward political homicide.

We are not attempting to prove that Cicero was a Stoic, but only that his discussion of tyrannicide in his philosophical works had a characteristically Stoic basis⁸). The fact that what we consider the Stoic view was at important points consonant with some traditional Roman ideals, such as *vim vi depellere*, does not automatically transform those ideas into philosophy: the crucial issue was whether a *civis* could be killed *indemnatus*, and whether *rex* (or *regnum*) was a political concept involving the exercise of powers, or a philosophical one, a *genus hominis*. Moreover, the notion of *vim vi depellere* is potentially at odds with another fundamental Roman concept, that of the protection of uncondemned citizens from arbitrary punishment or execution⁹). We shall

7) The *exempla* of Tarquinius Superbus, Sp. Maelius, Ti. Gracchus, and others, are well-known (cf. Lintott, *Violence*, 55–57); in more contemporary politics, Verres was attacked as *tyrannus* (Cic. *Verr.* 2.3.20), Cicero more than once claimed the status of *procurator*, and he was himself attacked within these same categories (*Vat.* 23, *Sest.* 109). On all this, Büchner, "Tyrann," 133–39: "in Milo aber und seiner Darstellung lässt Cicero nicht etwa nur den Tyrannenmörder hervortreten, sondern er trägt dieselben Züge wie der *tutor et procurator rei publicae* in *De re publica*" (138 f.).

8) Apparently overlooked not only by Büchner, but more particularly by those who have tried to deal with Stoic politics in the Republic: F. H. Sandbach, *The Stoics* (London 1975) 140–48; M. Pohlenz, *Die Stoa I* (Göttingen 1964) 139, 285, 313; Wirszubski (above, n. 5) 143–50; M. Reesor, *The Political Theory of the Old and Middle Stoa* (New York 1951). On the other hand, Michel (565–67) has seen the Stoic basis in the *Pro Milone*, though he evidently considers it merely ornamental (306–7). On the convergence between Platonism and Stoicism concerning tyrannicide, see below; as for Cicero's "Stoicism," see n. 34.

9) Cf. C. Nicolet's exposition of the rights and expectations of Paul as a Roman *civis* (*Acts* 16.37, 21.37–39, 22.25–29, 25.10–12) in *The World of the Citizen in Republican Rome* (London 1980) 18 f.

use Cicero's late treatise *De Officiis* 3 as a control to illustrate his mature philosophical views, and point to numerous parallels between the tyrant there portrayed and that of Stoicism; we shall then observe the use of these same categories executed rhetorically in the *Pro Milone* to justify Milo's murder of Clodius.

That Cicero's theory of tyrannicide was ultimately Stoic is in fact made clear by Cicero himself in *De Officiis* 3.19–32, written in 44; since the intent of the passage has not been clearly seen, a rather full explication is necessary.

Tyrannicide (32) becomes an ethical decision deduced from a *formula*, *Stoicorum rationi disciplinaeque maxime consentanea, quam quidem his libris sequimur* (20)¹⁰. The *formula* provides a mandate to the man acting in obedience to the *naturae ratio* (23). From the context, it is evident that tyrannicide is the ultimate ethical decision under consideration, and that, as such, it falls into the category of the Stoic *προηγμένα* (*si qui tyrannum occidit quamvis familiarem*, 19; *haec enim officia de quibus his libris disputamus "media" Stoici appellant*, 14)¹¹). The principle *detrahere alteri aliquid . . . est contra naturam*, which reflects the Stoic belief in the community of mankind and the protection of natural rights, represents in effect a loose definition of tyrannical action: for the tyrant destroys the human community (*principio tollit convictum humanum et societatem*, 21) and, conversely, must be denied the commodity of human society (cf. 32, quoted below). Furthermore, when Cicero expands his principle (22), the discussion of civil and natural rights against a tyrant derives from the Stoic philosophy of law, civilization, and cosmic order: *neque vero hoc solum natura, id est iure gentium, sed etiam legibus populorum; . . . hoc enim spectant leges . . . atque hoc multo magis efficit ipsa naturae ratio* (23). For it is the Stoic *sapiens* who will act in accordance with the *naturae ratio* in the removal of the tyrant, and who will imitate Hercules' labors on mankind's behalf (*quae est lex divina et humana; cui parere qui velit – omnes autem parebunt, qui se-*

10) Cicero borrows *formula* from Roman legal procedure (cf., e.g., F. de Zulueta, *The Institutes of Gaius* II [Oxford 1953] 251–54) as a description of his own method; though the method is confined to Book 3, where Cicero is avowedly on his own rather than following Panaetius, it is nevertheless *maxime consentanea* with Stoic philosophy.

11) On the Stoic system, see I. G. Kidd, "Moral Actions and Rules in Stoic Ethics," in J. M. Rist (ed.), *The Stoics* (Berkeley 1978) 247–58; G. B. Kerferd, "Cicero and Stoic Ethics," in *Cicero and Virgil: Studies in Honor of Harold Hunt* (Amsterdam 1972) 60–74.

cundum naturam volent vivere, 23; and, *magis est secundum naturam, pro omnibus gentibus, si fieri possit, convertendis aut iuvandis, maximos labores molestiasque suscipere imitantem Herculem illum*, 25)¹²). Cicero has adopted the Stoic definition of *εὐδαιμονία*, life according to nature, as a *formula* in the Roman juristic sense for making ethical decisions. The discussion culminates in Cicero's imperative to rid the commonwealth of the tyrant (32): *nam quod ad Phalarim attinet, perfacile iudicium est. nulla est enim societas nobis cum tyrannis et potius summa distractio est, neque est contra naturam spoliare eum, si possis, quem est honestum necare; atque hoc omne genus pestiferum atque impium ex hominum communitate exterminandum est. etenim, ut membra quaedam amputantur, si et ipsa sanguine et tamquam spiritu carere coeperunt et nocent reliquis partibus corporis, sic ista in figura hominis feritas et immanitas beluae a communi tamquam humanitatis corpore segreganda est.*

The "question of Phalaris," Cicero's favorite *exemplum* of the tyrant, becomes, in the light of his previous argumentation, a simple ethical judgment: not only can homicide be ethically supported as a good (*honestum necare*), but there is even a mandate to remove the tyrant from society.

Cicero's thesis rests upon the proposition that no social relationship exists between tyrants and humans, a dichotomy which is reinforced by the image of the wild beast (*feritas et immanitas beluae segreganda est*); hence, the responsibility consequent on normal human bonds does not apply in their case. The equation *tyrannus = belua* is distinctly (though not exclusively) Stoic: the Stoa maintained that no *κοινωνία* was shared by animals and mankind because they are separated by a great *ἀνομοιότης*¹³). Cicero invokes the beast-image frequently in connection with the tyrant: in the parallel description of the *tyrannus* in *De Republica* 2.48, he asserts that "there is no more hideous or filthy animal than the tyrant, nor can any be conceived more hateful to the gods and mankind; . . . by the savagery of his manners he surpasses the most desolate beasts." The tyrant, indeed, is only *in figura hominis*. This portrayal of the tyrant in sub-human terms conforms

12) R. G. Tanner, "Cicero on Conscience and Morality," *Cicero and Virgil: Studies in Honor of Harold Hunt* (Amsterdam 1972) 95, points out that altruism elevates actions from the class of Intermediates to that of the Good.

13) Diog. Laert. 7.129: *ἐτι ἀρέσκει αὐτοῖς μηδὲν εἶναι ἡμῖν δίκαιον πρὸς τὰ ἄλλα ζῷα, διὰ τὴν ἀνομοιότητα, καθὰ φησι Χρύσιππος ἐν τῷ πρώτῳ περὶ δικαιοσύνης*. Cicero follows Chrysippus, *De Fin.* 3.67.

also to the popular Stoic use of *ἀγροικία* to denote a lack of civilized manners in a forceful and dominating personality¹⁴).

The tyrant as *genus hominis* can be summarized as follows: *nulla societas* (*ἀγροικία*), *belua* (*θηριώδης*, *genus pestiferum*), *exsul* (*φυγάς*)¹⁵. He is to be recognized in action by his *dominatio* (*regnum*, *δεσποτικά ποιεῖν*, see n. 14) in violation of law (*παράνομος*) and of nature (*contra naturam*). The tyrant is something less than human: he does not belong to civilized society, so that his murder involves no greater ethical conflict than the killing of any other beast.

This classification was not in itself original with the Stoics: it has much in common with Plato's colorful description of the *τυραννικός* in Book 9 of the *Republic* (573–76)¹⁶. Stoicism did, however, borrow heavily from Plato, and the Stoic *τύραννος* differs from Plato's in two respects. First, Plato's *τυραννικός* is a product of his theoretical cycle of constitutional decay, the charac-

14) The proximity of Cicero's thought to Stoic doctrine is illustrated by a passage from Stobaeus (von Arnim III, p. 169) no. 677: *φασὶ δὲ καὶ ἀγροικὸν εἶναι πάντα φαῦλον τὴν γὰρ ἀγροικίαν ἀπειρίαν εἶναι τῶν κατὰ πόλιν ἐθῶν καὶ νόμων ἢ πάντα φαῦλον ἔνοχον ὑπάρχειν. εἶναι δὲ καὶ ἀγριοὺς, ἐναντιωτικὸν ὄντα τῇ κατὰ νόμον διεξαγωγῇ καὶ θηριώδη καὶ βλαπτικὸν ἄνθρωπον. τὸν δ' αὐτὸν τοῦτον καὶ ἀνήμερον ὑπάρχειν καὶ τυραννικόν, οὕτως διακειμένον ὥστε δεσποτικά ποιεῖν, ἐτι δὲ ὠμὰ καὶ βίαια καὶ παράνομα καιρῶν ἐπιλαβόμενον.* Thus the *φαῦλος* manifests *ἀγροικία* by way of two characteristics: the use of force to settle disputes, and his penchant for imposing his will over that of his fellows; such a one is called "harmful" (*βλαπτικός*), "tyrannical," or, more vividly, "wild" (*ἀνήμερος*) and "bestial" (*θηριώδης*); finally, his tyranny is lawless (*παράνομος*), violent (*βίαιος*), and raw (*ὠμός*). This Stoic *genus hominis* is to be understood as *παρὰ φύσιν* and *παρὰ νόμον*: inasmuch as the city provided the possibility of "life according to nature" (*ζῆν κατὰ φύσιν*; cf. H. Baldry, "Zeno's Ideal State," *JHS* 79 [1959] 8), the tyrant is a flagrant violator of custom and law. The Stoic debt to popular Greek views of tyranny and the tyrant is strong: Hdt. 3.80.5 (*νόμαί τε κινεῖ*), Polyb. 6.10 (*δημοκρατία δ' ὁ θηριώδης καὶ χειροκρατικός*); but also Plato, *Gorg.* 510b (*τύραννός ἐστιν ἄρχων ἀγριος*) and *Rep.* 573–76, on which see discussion below. Indeed, the Anonymus Iamblichi (Diels-Kranz 15) provides a possible nexus for the common Greek view and the subsequent Stoic development; for the influence of the Anonymus Iamblichi on Cicero's *De Officiis*, A. T. Cole, "The Anonymus Iamblichi and his Place in Greek Political Theory," *HSCP* 65 (1961) 127–63, and Q. Cataudella, "Sulle fonti del 'De Officiis' di Cicerone," *Atti del I. Congresso Internazionale di Studi Ciceroniani* 2 (1961) 479–91.

15) Stobaeus 2.208 (ed. C. Wachsmuth [Berlin 1884]): *λέγουσι δὲ καὶ φυγάδα πάντα φαῦλον εἶναι, καθ' ὅσον στέρεται νόμου καὶ πολιτείας κατὰ φύσιν ἐπιβαλλούσης*; Cicero later represents Clodius explicitly in term of the *exsul* (*Parad. Stoic.* 32: *sed quid ego communes leges profero, quibus omnibus es exsul?*)

16) Lintott, *Violence*, 54 refers Cicero's theory of tyrannicide to Plato.

ter of the leader being corrupted under the pressure of *ἔρως*; it is fundamental to Platonic thought that no one knowingly seeks evil. Second, Plato's *τυραννικός* is one who is, by law or by usurpation, in power: in short, a magistrate, and it is in the exercise of his magistracy that his failings are revealed. But the Stoic *τύραννος* need not be a magistrate, he is a *genus hominis*: this was vital to Cicero's published defense of Milo, as we shall see; since Cicero did not use this argument in the defense actually delivered, the summer of 52 represents an important moment in Cicero's synthesis of the Stoic tyrant with Roman political ethics.

In the *Pro Milone*, Cicero endows the standard devices of polemic, such as questioning Clodius' sexual proclivities (55–56) and his outrages against religion (85–87), with philosophical content. Clodius' sexual interests and impieties are crimes against nature and law (*ut eum nihil delectaret quod aut per naturam fas esset aut per leges liceret*, 44; cf. 73, 74). This conforms to the picture of Clodius' alleged bestiality (40–41):

illam beluam, iudicii laqueos declinantem iam inretitam teneret (sc. M. Antonius) ... cum se ille fugiens in scalarum tenebras abdidisset ... cum ille in saepta irrupisset, ... dein subito voltu Milonis perterritus fugeret ad Tiberim.

The catachresis *iudicii laqueos declinantem* emphasizes that Clodius, as *belua*, does not fit into the civilized (court) system of Rome, and the two bestial images (*fugiens in scalarum tenebras*; *in saepta irrupisset*) stress his wildness and animal-like behavior in sharp contrast to civilized men¹⁷).

Clodius and his wildness do not belong to a civilized society; indeed, such behavior can destroy society itself¹⁸). If anything is

17) The imagery is deliberately ambiguous. *Scalarum tenebrae* suggests not only the staircase but the haunt of an animal, and *saepta* invokes both the voting units and hunting nets; these words are recalled by Cicero in *Phil.* 13.5: *quibus enim saeptis tam immanis beluas continebimus*. The passage quoted in the text also carries, by implication, an image of Clodius as *exsul*: *fugiens in tenebras*; see n. 15). The use of *belua* was not an uncommon *topos* in Cicero (according to F. Donnelly, *Cicero's Milo: A Rhetorical Commentary* [New York 1934] there are 20 such occurrences in the speeches), but a casual survey reveals that Clodius and Antony occupy the *topos* a disproportionate number of times; Clodius: *Mil.* 40,85; *Sest.* 16; *Har. Resp.* 5; Antony: *Phil.* 3.28, 4.12, 7.27.

18) The theme of Cicero's (or Milo's) fears about the impending tyranny of Clodius appears throughout; e. g., 43: *qui [Clodius] se ipse interfecto Milone regnaturum putaret*, fully amplified in 76–78. In the virtually contemporary *De Republica*, Cicero makes the same point philosophically, 3.43: *ergo ubi tyrannus est, ibi non vitiosam, ... sed ... dicendum est plane nullam esse rem publicam*. Subsequent continuity in Cicero's thought is visible in *De Off.* 3.21, discussed above.

certain about Cicero's portrayal of Clodius in the *Pro Milone*, it is that Clodius has disrupted the normal *societas* of Rome by his wanton recourse to *vis*, and has intimidated good and decent citizens, robbing them of their natural and civil rights. In part, this emerges from the depiction of Clodius as *belua*, but the notion is broadened in 37–39, where Cicero lists some prominent *cives* who have suffered directly or indirectly from Clodius' oppression: he includes himself (38, also 37) and must remind Pompey (who presides over the trial) that even he has not escaped the insidious machinations of Clodius (39). Clodius' *dominatio* is illustrated by what would have happened, had not Milo killed him: *oppressisset omnia, possideret, teneret; lege nova, quae est inventa apud eum cum reliquis legibus Clodianis* (89). The lesson of the manipulation of the legal system by violent men, long considered a characteristic of tyrants¹⁹), had been well learned at Rome: by invoking this against Clodius, Cicero places his opponent within the confines of an ethical and philosophical system capable of supplementing Cicero's conservative political outlook, a system from which he could attack the mock legal authority of aspiring *tyranni*.

Clodius, then, is manifestly shown to be a tyrant; but what of Milo? The extant defense adorns Cicero's evidentiary, or rhetorical, arguments with a philosophical content in harmony with his Stoic view of Clodius. In *Pro Milone* 10–11²⁰), Cicero lays the basis for his argument from the plea of self-defense, a plea which is eventually elaborated in terms of the question *uter utri insidias fecit*. Cahen explicates the text in terms of its relationship to the *lex Cornelia*²¹); but while the legal aspect is certainly important,

19) Cicero himself asserted that the laws of the tyrant, his *dominatio*, should not be considered just, simply because they were couched in constitutional form: *De Leg.* 1.42. This is the point of Cicero's manner of attack on the *leges Clodianaes*; laws imposed by a man seeking *dominatio* or *regnum* were no laws at all, and need not be obeyed. Cf. also *Cic. Dom.* 43 ff., *Pis.* 58.

20) *Cic. Mil.* 10–11: est igitur haec, iudices, non scripta, sed nata lex, quam non didicimus, accepimus, legimus, verum ex natura ipsa adripiimus, hausimus, expressimus, ad quam non docti sed facti, non instituti sed imbuti sumus, ut, si vita nostra in aliquas insidias, si in vim et in tela aut latronum aut inimicorum incidisset, omnis honesta ratio esset expediendae salutis. silent enim leges inter arma nec se expectari iubent, cum ei qui expectare velit ante iniusta poena luenda sit quam iusta repetenda. etsi persapienter et quodam modo tacite dat ipsa lex potestatem defendendi, quae non hominem occidi, sed esse cum telo hominis occidendi causa vetat, ut, cum causa, non telum quaereretur, qui sui defendendi causa telo esset usus, non hominis occidendi causa habuisse telum iudicaretur.

21) R. Cahen, "Examen de quelques passages du *Pro Milone*," *REA* 25 (1923) 119–38, esp. 122 ff.

its philosophical underpinnings seem to have been overlooked. For Cicero appeals to an unwritten, natural law (*haec non scripta, sed nata lex*) which upholds a man's right to defend himself and which is known transcendently, derived from nature herself (*ex natura ipsa adripiimus*); Milo, by killing Clodius as an *insidiator*, merely follows natural law in a life or death situation where civil laws are superseded (*silent enim leges inter arma*)²²). The notion of justifiable self-defense was of course thoroughly accepted at Rome long before the advent of Stoicism, but the two ideologies converge conveniently here; somewhat later on, Cicero appeals again to this doctrine, in terms which ring increasingly Stoic (30):

si id iure fieri non potuit, nihil habeo quod defendam. sin hoc et ratio doctis et necessitas barbaris et mos gentibus et feris natura ipsa praescripsit ut omnem semper vim quacumque ope possent a corpore, a capite, a vita sua propulsarent, non potestis hoc facinus improbum iudicare quin simul iudicetis omnibus qui in latrones inciderint aut illorum telis aut vestris sententiis esse pereundum.

Natural law here finds expression differently among different levels of culture, from *docti* to *ferae*, but all are agreed on self-preservation; to deny this would undermine the basis of civil order. The argument, thus isolated, resides somewhat strangely among historical *exempla* and particular elements of the Roman legal system; but in the larger context Cicero has cleverly manipulated philosophical doctrine into a standard plea for self-defense²³).

Indeed, he will go farther: the plea of self-defense, while not abandoned, becomes subordinate to a higher justification of Milo; in his assassination of Clodius, Milo has acted in obedience to the natural order, performing a benefit to mankind from altruistic

22) See *Sest.* 86 (quoted below, n. 29), and Michel, 306–307. The centrality of this assertion to Cicero's philosophy of law and ethics is illustrated by two passages from *De Legibus* and one from *De Finibus*. *De Leg.* 1.19 is definitional: law is a transcendental *ratio* in Stoic terms (cf. also *De Leg.* 2.8, and Chrysippus [von Arnim III, p. 77] no. 308); *De Leg.* 2.11 extends this definition, showing that the instinct of self-preservation is basic to the formation of civil law (*constat profecto ad salutem civium civitatumque incolumitatem vitamque hominum quietam et beatam inventas esse leges*). Finally, the first proposition of Cicero's ethical system is to be the law of self-preservation, an instinct expressed from nature, *De Fin.* 4.25 (*sed positum sit primum nosmet ipsos commendatos . . . appetitionem ut conservemus nosmet ipsos*; cf. *De Fin.* 5.24). On the connection of this doctrine with the brotherhood of man, H. A. K. Hunt, *The Humanism of Cicero* (Melbourne 1954) 91, 181–82.

23) Büchner, *Cicero*, 255–57.

motives²⁴). Cicero does insist in Milo's altruism, for he brings this characteristic to the fore on three different occasions early in the speech: Milo puts the welfare of the *res publica* ahead of his own (1), ignoring the disturbances of the Clodiani in favor of the public safety (3), and in fact he is always so motivated (6: *rebusque omnibus pro salute rei publicae gestis*). Whatever the historical reality of Milo's character, Cicero pictures him with only the noblest goals; toward the end of the speech, Milo "speaks" of his own altruism (93):

"valeant," inquit, "valeant cives mei; sint incolumes, sint florentes, sint beati; stet haec urbs praeclara mihiq[ue] patria carissima, quoquo modo erit merita de me; tranquilla re publica mei cives, quoniam mihi cum illis non licet, sine me ipsi, sed propter me tamen perfruantur. ego cedam atque abibo."

Strong reinforcement for this portrait of Milo's heroism comes from the so-called *extra causam* passage in *Pro Milone* 72–91. There is, to be sure, nothing theoretically unorthodox about using such a device²⁵, but this particular *extra causam* is remarkable; Cicero here attributes the *felicitas* of Rome to the powers of Fortuna and the gods: *sed huius benefici gratiam, iudices, Fortuna populi Romani et vestra felicitas et di immortales sibi deberi putant* (83). Several references to the eternal and comprehensive power of *providentia* follow (84):

est, est illa vis profecto, neque in his corporibus atque in hac inbecillitate nostra inest quiddam quod vigeat et sentiat, non inest in hoc tanto naturae tamquam praeclaro motu, nisi forte idcirco non putant quia non apparet nec cernitur. . . . ea vis igitur ipsa quae saepe incredibilis huic urbi felicitates atque opes attulit illam perniciem exstinxit ac sustulit, cui primum mentem iniecit ut vi inritare ferroque lacessere fortissimum virum auderet vincereturque ab eo quem si vicisset habiturus esset impunitatem et licentiam sempiternam.

24) These are the dominant characteristics of the Sage described in *De Off.* 3.23 and 3.25 (the invocation in the latter of Hercules makes the Stoic connection plain). Stoics of the Republic (and earlier) advocated enlightened performance of duty and necessity (cf. Chrysippus [von Arnim III, p. 137] no. 510), an ethic for which Cato the Younger became a model: A. Afzelius, "Die politische Bedeutung des Jüngerer Catos," *Classica et Mediaevalia* 4 (1944) 111–16. In his philosophical works, Cicero consistently delineates the *sapiens* in these terms (e. g., *De Fin.* 3.59, 60, 62 ff.), a consideration which gives new force to the unusual *persapienter* in association with *lex* in *Pro Milone* 11 (quoted above, n. 20). Cf. also Michel, 567.

25) A. C. Clark, *M. Tulli Ciceronis Pro T. Annio Milone ad Iudices Oratio* (Oxford 1895) p. lvi.

The eternal *vis* which provides for Rome has averted her destruction by inserting into Clodius' mind the foolhardy intention to attack Milo; otherwise, that *pernicies* would have prevailed. The metonymy of *vis* in place of *providentia* is a powerful trope in a trial *de vi*; when read in juxtaposition to the clause where Clodius *vi irritare . . . auderet*, we find an assertion by Cicero that there are two kinds of *vis*: there is, on the one hand, the pernicious force of Clodius; but there is also the force of Providence which arranged the meeting at Bovillae in order to save the Republic. Thus the *extra causam* passage, as Büchner has noted, is no mere rhetorical flourish, but Cicero's "careful interpretation" of the event²⁶), an interpretation which gives new import to the traditional Roman doctrine of *vim vi depellere*.

Already in 57 Cicero had considered the death of Clodius a possible outcome of the *inimicitia* between him and Milo²⁷). It was therefore a short step, after the fact, to attribute the slaying to a predestined fate for Clodius. In this sense, Milo seems to play no active role in the *providentia*-passage: for him it was merely a case of self-defense; but for Clodius, *ad hanc insignem poenam reservatus* (86), it was a case of the judgment of the gods.

In a larger sense, however, Milo is actively involved in the *extra causam* passage. In the developed explication of Cicero's philosophy, we find that Providence does not negate the role of the *sapiens*, but rather works together with him in protecting the commonwealth. In *De Officiis* 3.23, as we have seen, Cicero maintains that civil law provides for the restraint or death of the person who destroys the *civium coniunctio*, but still more does the *naturae ratio*, the combination of human and divine law. If we employ this passage to review the *providentia*-passage in the *Pro Milone*, it becomes clear that Milo acted in accordance with the *naturae motus* or *naturae ratio*. Thus does Milo become the Stoic *sapiens* who, in obedience to natural law, altruistically provides for the Republic and is transformed into the instrument of Providence for the removal of the tyrant²⁸).

26) Büchner, *Cicero*, 276.

27) *Cic. Att.* 4.5 (*occisum iri ab ipso Milone video*).

28) The proximity of Cicero's thought here to contemporary Stoicism, specifically Posidonius, is clear from, e. g., Seneca's summary of Posidonius' view of the role of the *sapientes* in leading men from an uncontrolled, animal-like existence to an urbanized life of tamedness and justice: *Ep.* 90.5-13, 20-25, 30-32 (= Posidonius, frg. 284 Edelstein-Kidd [Cambridge 1972]). Cf. further J. Harmatta, "Poseidonios über die römische Urgeschichte," *Acta Classica* 7 (1971) 21-25. We might also note *Sest.* 91: *qui igitur primi virtute et consilio praestanti exstiterunt, ii*

A few years before Milo's trial, in the *Pro Sestio*, Cicero had argued that if the laws do not avail, extra-legal action is necessary to obtain justice²⁹). Now Cicero alleges that Clodius' actions were uncontrollable either by the laws or by the Republic; the use of force was *non numquam necessaria* (14) when the legal system could no longer hold Clodius at bay. He also reminds Pompey of the "sick and failing parts of the Republic" which had been entrusted to him³⁰), an attempt to soften Pompey's displeasure with Milo. Cicero believed that the events immediately preceding Clodius' death had constituted a moment of crisis; if Clodius had killed Milo, he would have completed his *dominatio*. It was therefore a time to recall the social contract, that some private individual must take action for the common good if the laws could not provide personal safety: this individual was Milo, who alone of mankind opposed with force the force of Clodius³¹). Milo had killed a man who could not be contained by the system; Cicero has him say, "P. Clodium interfeci, eius furores, quos nullis iam legibus, nullis iudiciis frenare poteramus . . . reppuli" (77). But Milo could not have succeeded entirely on his own: Providence was also involved, looking out for Rome's salvation; the Republic could never in its own right have taken revenge on a successful Clodius: *aliter perire pestis illa non potuit; numquam illum res publica suo iure esset ulta* (88).

Scholars have noted that Cicero's two major themes, the plea of self-defense and the invocation of divine Providence, are somewhat at odds with one another. The generally accepted explanation for this tension is that Cicero only incorporated the "philosophical" sections into the written (published) version of the speech,

perspecto genere humanae docilitatis atque ingeni dissipatos unum in locum congregarunt eosque ex feritate illa ad iustitiam atque ad mansuetudinem transduxerunt.

29) Cic. *Sest.* 86: si leges non valerent, iudicia non essent, si res publica vi consensuque audacium armis oppressa teneretur, praesidio et copiis defendi vitam et libertatem necesse est.

30) Cic. *Mil.* 68: sed quis non intellegit omnis tibi rei publicae partis aegras et labantis, ut eas his armis sanares et confirmares, esse commissas? Perhaps Cicero here invokes for Pompey the venerable figure of Cato the Elder, whose statue in the Temple of Salus was inscribed (though presumably in Latin) with a very similar sentiment: *ὄτι τὴν Ῥωμαίων πολιτείαν ἐγκεκλιμένην καὶ ῥέπουσαν ἐπὶ τὸ χεῖρον, τιμητῆς γενόμενος . . . εἰς ὄρθον αὐτῆς ἀποκατέστησε* (Plut. *Cat. Mai.* 19.3). It was, after all, the Basilica Porcia which was burned down in the riot during Clodius' "funeral" (Asconius, p. 33C).

31) Cic. *Mil.* 88: obstabat eius cogitationibus nemo praeter Milonem.

that the defense actually spoken rested entirely on the plea of self-defense. This view rests firmly on the evidence of Asconius, who tells us that in the spoken version Cicero directed his whole argument (*tota oratio*) to matters of evidence³²); in this, Cicero was following the line of defense originally adopted by Milo himself and by the tribune M. Caelius in pre-trial *contiones*³³). The change in tactics between the spoken and written version argues a change in perspective on Cicero's part which led, we believe, to Cicero's theory of tyrannicide.

Of interest for our argument is the information that M. Brutus had actually suggested a philosophical line of defense for Milo, to the effect that Clodius could be killed for the public good (*pro re publica*) and without a trial (*indemnatus*); but Cicero rejected this suggestion at the time of the trial³⁴). The basis for Cicero's displeasure with Brutus' proposal could not have been political: he had himself executed (or caused to be executed) some of the Catilinarians without trial in 63, and he defended Rabirius earlier that year for what was, in effect, a crime very like Milo's; the telling difference between Milo's case and the earlier ones in which Cicero was involved was that the executive had then been authorized to use extreme force by way of the *senatus consultum ultimum*³⁵).

32) Asconius, p. 41C. See also Quint. *Inst. Orat.* 4.3.16–17.

33) Asconius, p. 33C: *contionem ei post aliquot dies dedit M. Caelius tribunus plebis atque ipse etiam causam egit ad populum. dicebant uterque Miloni a Clodio factas esse insidias.* (We follow here Madvig's text; Clark arbitrarily emended *plebis ac ipse* to *plebis ac Cicero ipse*, against which see Lintott, "Cicero and Milo," 70 n. 101 and J. S. Ruebel, "The Trial of Milo in 52 B. C.," *TAPA* 109 (1979) 236 n. 14.).

34) Asconius, p. 41C: *interfici Clodium pro re publica fuisse – quam formam M. Brutus secutus est in ea oratione quam pro Milone composuit et edidit quasi egisset – Ciceroni id non placuit ut, quisquis bono publico damnari, idem etiam occidi indemnatus posset.* The philosophical allegiance of Brutus is, strictly speaking, somewhat unclear: he "admired Cato" (a hard-line Stoic) more than any other man, but "followed" the Old Academy, according to Plutarch (*Brut.* 2); on the other hand, he wrote a treatise on the Stoic doctrine *περί καθήκοντος* (*Sen. Ep.* 95.45) and in a letter to him Cicero appeals to *Stoici nostri* (*Ad M. Brut.* 1.15.5), on which see D. R. Shackleton Bailey, *Cicero: Epistulae ad Quintum Fratrem et M. Brutum* (Cambridge 1980) 247: "Cicero appears to have moved nearer to Stoicism at the end of his life. Brutus followed Antiochus of Ascalon, whose doctrine Cicero considered almost indistinguishable from that of the Stoa".

35) In 57, Cicero apparently entertained the idea of killing Clodius, just as Nasica had killed Ti. Gracchus; but at that time he preferred to remain within the legal system (*Cic. Dom.* 91 and *Att.* 4.3). The case of Ti. Gracchus was difficult for defenders of senatorial authority, for no *S.C.U.* had actually been decreed in that situation; but the issue tended to be obfuscated in use: cf. J. Baron Ungern-Sternberg von Pürkel, *Spätrepublikanisches Notstandsrecht* (München 1970) 12–18.

What Cicero must have objected to in Brutus' argument was that Milo, *without authority*, had killed a citizen (albeit a harmful one) who had not been tried. Cicero presumably felt that the legal situation was untenable in that case, and was unable or unwilling to use the arguments of philosophy; Milo must still be brought to trial and, as Cicero hoped, acquitted. The evidence, however, turned out to be overwhelmingly against Milo: the argument *uter utri insidias fecit* had less impact on the jury than the fact that Clodius had been murdered on direct orders from Milo³⁶).

Cicero's inability to acquit Milo cannot be attributed to his failure to speak with his usual *constantia*, but rather to his reliance on the defense *uter utri insidias fecit*. In revising his speech for circulation among the Roman aristocracy, Cicero must have realized the inadequacy of this argument. Nor could Milo's conviction be reversed, even with better arguments from the evidence; but he could be vindicated through the philosophical portrayal of his actions as those of a *τυραννοκτόνος*. Cicero's own interests led him to reconsider the suggestion made by Brutus that the slaying was a positive benefit in essentially Stoic terms³⁷). The philosophical foundation thus introduced brought Cicero's thought very close to that of Brutus and, as we have indicated, to the Stoics in general, especially (no doubt) Panaetius and Posidonius. The fact that Cicero did not argue for the justifiable killing

Cicero's later works place the elder Gracchus into the (philosophical) category of *tyrannus*, so that legal anomalies of this sort no longer form an obstacle. On the other hand, Cicero's whole defense of Rabirius in 63 turned on the validity of the *S.C.U.*, not on the justice of Rabirius' action. The death of the younger Gracchus in 121 could be handled more directly; cf. *De Orat.* 2.132 (*quid facit causam? quod rei publicae causa, cum ex senatus consulto ad arma vocasset [Opimius]; hoc tolle, causa non erit. at id ipsum negat contra leges licuisse Decius; veniet igitur in iudicium licueritne ex senatus consulto servandae rei publicae causa.*).

36) Cf. Asconius, p. 32C.

37) In view of this it is ironic that Brutus later refused to execute the young C. Antonius, despite Cicero's arguments to the contrary, on the basis of his traditional respect for *civitas*: *Ad M. Brut.* 1.4.2 (Brutus to Cicero, May 7, 43): "at hoc ipsum," inquires "inique facis qui hostilis animi in rem publicam homines civis appelles." immo iustissime, quod enim nondum senatus censuit nec populus Romanus iussit, id adroganter non praeiudico neque revoco ad arbitrium meum. illud quidem non muto quod ei quem me occidere res non coegit neque crudeliter quicquam eripui neque dissolute quicquam remisit. (The letters in which Brutus rebukes Cicero for inconstancy against tyranny, *Ad M. Brut.* 1.16 and 1.18 [see Plut. *Brut.* 22] are almost certainly spurious: D. R. Shackleton Bailey [above, n. 34] 10-14. On the philosophical content of the correspondence with Brutus, Michel 570-74).

of a citizen *indemnatus* during the trial, but did so in the published speech, strongly implies that he forged his synthesis of the tyrant as portrayed by the Middle Stoa with traditional Roman values during or immediately after the year 52. Cicero was occupied with affairs of state until after the Civil War, and only after his forced retirement from politics in the dictatorship of Caesar did he turn to extensive writing on philosophy; but regarding tyrannicide his later writings express views wholly consonant with those reached in *Pro Milone* and *De Republica*, which were both written at least eight years earlier³⁸).

Cicero appears to provide substantiating material himself for this view. In *De Finibus* he presents a conversation between himself and Cato in the Tusculan library of the young Lucullus on the subject of Stoicism, a conversation which apparently took place on September 14, 52³⁹). The dramatic Cicero indicates that, as far as he is concerned, his views and those of the Stoics are the same, that his quarrel with them lies not with the *sententiae* but with the *verba*: that is, he favors the liberal Stoicism of Panaetius to the doctrinaire and conservative Stoicism of Cato⁴⁰). The dramatic date is important: it places the discussion in the very shadow of the trial of Milo in April and its repercussions throughout that summer, repercussions which kept Cicero continually occupied in the courts well into the next year, except during the holidays; it was only with the beginning of the *ludi Romani* that he was able to escape the City⁴²). It is unlikely, in view of his crowded schedule during the summer, that Cicero revised and published the *Pro Milone* until during or after this holiday, so that it is not unreason-

38) Cicero had already adumbrated a view of the growth of civilization in *Pro Sestio* (86–87, 90–91) which is consonant with that indicated in *Pro Milone*; in other words, Cicero's public experimentation with Stoic doctrine follows shortly after his return from exile. But the crucial point for our discussion is that Cicero cannot advocate homicide *sine iudicio* before 52 on grounds other than those traditional to Roman law and politics. But by the time of the publication of *Pro Milone* Cicero has extrapolated Stoic doctrine to the question of tyrannicide.

39) Cic. *De Fin.* 3.7–8, and 4.1 (*nova lege*, referring to the *lex Pompeia de vi*).

40) Cic. *De Fin.* 3.10 (*ratio enim nostra consentit, pugnat oratio*); 4.60, 78–79.

41) Cf. *De Fin.* 3.8, 4.1; *Fam.* 7.2 (now rightly dated to January of 51 by D. R. Shackleton Bailey, *Cicero: Epistulae ad Familiares* I [Cambridge 1977] 351).

42) *De Fin.* 3.8 (*ludis commissis*).

nable to suppose that it was in fact in September of 52 that he produced our extant, “philosophical” version⁴³).

In part, at least, the revised speech was intended for Milo himself, as a *consolatio*: represented as a Stoic hero, Milo should be consoled by his altruistic self-sacrifice on behalf of the Republic; it was the “jury” which was to be in tears at the prospect of Milo’s exile, whereas Milo himself would endure *exilium* in a manner worthy of his stature: “valeant, valeant, cives mei . . . , ego cedam atque abibo”⁴⁴). It had been a difficult summer for the *boni*, and Cicero sent letters of consolation to at least two other friends in exile⁴⁵). When Milo, in exile in Massilia, received his *consolatio*, he replied, “Had this speech actually been delivered, I would not now be eating these mullets”⁴⁶), thus making clear the degree to which he was in truth a *sapiens*.

Hattiesburg, Mississippi
Ames, Iowa

Mark Edward Clark
James S. Ruebel

TWO NOTES ON OVID, HEROIDES X

I.

Inde ego – nam uentis quoque sum crudelibus usa – 29
 uidi praecipiti carbasa tenta noto.
 † aut uidi aut tamquam quae me uidisse putarem,
 frigidior glacie semianimisque fui.

31 aut (1^o) ut Bentley tamquam que me G: a*quam que me P^{ac} (om. aut): fuerant que me W^{vi} rec.: certe cum me rec.: etiam cum me FP² rec. (unde etiam cum te c. Bentley): tantum quia me Madvig: quod erant quae Heinsius putarem] -avi G (Madvig): -abam Pa Y

43) Perhaps suggested by Dio Cassius 40.54.2 (κατὰ σχολήν). Cicero’s schedule later in 52 and early in 51 was no less crowded, as shown by *Fam.* 7.2.

44) *Mil.* 93

45) *Fam.* 5.18, 5.17. Clark (above, n. 25) p. lvii, notes that the *Pro Milone* does not exhibit a true *commiseratio*; but he overlooks that the speech was to be a *consolatio* for Milo.

46) Dio Cassius 40.54.3.